IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2973 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT TEA PROCESSORS AND PACKERSS PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 2973 of 1983
NOTICE SERVED for Petitioners
MR ASIM J PANDYA for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 02/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of certiorari or writ of mandamus or any other appropriate writ, direction or order to declare Tariff Item 3(2) of the First Schedule to the Central Excise & Salts Act, 1944 as unconstitutional, ultra vires and void. The petitioners have further prayed to direct the respondents to desist from making any levy or collection of duty from the petitioner-company under Tariff Item 3(2) of the First Schedule to the said Act, and also to direct the respondents to refund all sums illegally realized from the petitioner-company by way of alleged excise duty on package tea belonging and sold by the petitioners, with interest at the rate of 12% per annum.

The petition was placed for admission hearing before the Division Bench on June 29, 1983, and the following order was passed:

"Leave to amend by deletion of the words "No. 2337 of 1982" and substitution of the words "5476 of 1982" in paragraph 16 of the petition.

Rule. Notice to the Attorney General. Rule to be heard with Sp.C.A.No.5476 of 1982.

Mr.N.J.Mehta states that the petitioners will continue to pay the impugned duty under protest till the decision of the present writ petition."

2. It may be stated that earlier petitioners were represented by their learned lawyer, Mr.N.J.Mehta, and on his sad demise, notices were issued to the petitioners calling upon them either to appear in-person or through their lawyer. But, in spite of service of notice, neither the petitioner no.1 has deputed any of its authorized officer to represent its case before the Court nor a lawyer, nor the petitioners have appeared in-person. Under the circumstances, the Court has decided to dispose of the petition with the assistance of Mr.Asim J.Pandya, learned counsel appearing for the respondents.

3. From the order dated June 29, 1983, which is quoted above, it is evident that instant petition was directed to be heard with Special Civil Application No.5476 of 1982. Special Civil Application No.5476 of 1982 was filed by Brooke Bond India Limited, Calcutta & Anr. against the Union of India & Ors. It has been

decided by the Division Bench of this Court vide judgment dated September 3, 1991. The said judgment is reported in 1992(1) G.L.R. 452. After considering the matter at length, the Division Bench has held that Tariff Item 3(2) is not violative of Article 14 of the Constitution of India. In view of the decision rendered in Special Civil Application No.5476 of 1982, we are of the opinion that the present petition also will have to be dismissed.

4. For the foregoing reasons, and the reasons stated in the decision rendered in Brooke Bond India Limited, Calcutta & Anr. (Supra), the petition fails, and is dismissed. Rule is discharged. There shall be no order as to costs.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

Rajendra